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FUTURISTIC BUILDERS SDN BHD

v.

HARINDER SINGH & ORS

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FEDERAL COURT, PUTRAJAYA
ALAUDIN MOHD SHERIFF FCJ
ARIFIN ZAKARIA FCJ
HASHIM YUSOFF FCJ

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[CIVIL APPEAL NOS: 02-1-2007(W),
W-02-647-98 & S1-22-56-96]
15 JANUARY 2008

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CONTRACT: *Agreement - Validity - Agreement entered into by two beneficiaries authorised by other beneficiaries of estate of deceased - No letters of administration issued at material time - Neither was agreement executed in beneficiaries' personal capacity - Whether agreement was enforceable once letters of administration were issued*

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SUCCESSION: *Administration - Agreement, validity of - Agreement entered into by two beneficiaries authorised by other beneficiaries of estate of deceased - No letters of administration issued at material time - Neither was agreement executed in beneficiaries' personal capacity - Whether agreement was enforceable once letters of administration were issued - Probate and Administration Act 1959, s. 39*

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The respondents were beneficiaries of two pieces of land ('the lands') owned by one Ujagar Singh since deceased. The 2nd and 6th respondents entered into an agreement with the appellant developer to develop the lands. There were letters of authorisation signed by the rest of the beneficiaries to that effect. However, as at the date of signing the agreement, the letters of administration ('LA') were not issued. They were only granted to the 2nd respondent thereafter. The respondents subsequently decided not to proceed with the agreement and the appellant sought, *inter alia*, specific performance and damages for breach of contract at the High Court. The High Court held in favour of the appellant and the respondents successfully appealed to the Court of Appeal. Hence, the appellant's appeal before the Federal Court on a question of law, primarily whether the agreement became valid and enforceable once the LA was issued.

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Held (dismissing the appeal)**Per Arifin Zakaria FCJ delivering the judgment of the court:**

- (1) This court agreed with the view expressed by the Court of Appeal that the 2nd and 6th respondents put their respective signature to the agreement, not for and behalf of the estate but as having been signed by the estate. Also, as at the date of signing the agreement, they did not have any valid title or interest in the lands and therefore were not in a legal position to pass on any interest to the appellant by virtue of the agreement. (para 24)
- (2) The view expressed by the Court of Appeal was in line with s. 39 of the Probate and Administration Act 1959. The lands only became vested on the 2nd respondent when he obtained the LA. Further, this court agreed with the Court of Appeal that the authorisation letters could not assist the appellant. That was because the other respondents did not have any right to authorise the 2nd and 6th respondents to enter into the agreement on behalf of the estate. Only an administrator appointed under the Probate and Administration Act 1959 will have the authority to do so. The 2nd and 6th respondents were, therefore, not competent to enter into the agreement on behalf of the estate. Neither could the agreement be binding on the respondents because it was an agreement purportedly made between the estate of Ujagar Singh and the appellant. Since the respondents were not parties to the agreement, it could not be binding on them. It followed that the 2nd and 6th respondents could not have entered into the agreement on behalf of the estate without the grant of the LA. Therefore, the agreement was invalid and unenforceable. (paras 25, 26, 27 & 28)

Bahasa Malaysia Translation Of Headnotes

Responden-responden adalah benefisiari-benefisiari kepada dua bidang tanah ('tanah-tanah') yang dimiliki oleh seorang Ujagar Singh, simati. Responden-responden kedua dan keenam telah memasuki satu perjanjian dengan pemaju perayu bagi membangunkan tanah-tanah. Bagi maksud itu, benefisiari-benefisiari yang lain telah menandatangani surat-surat izin mereka masing-masing. Bagaimanapun, semasa perjanjian dimeterai, surat kuasa mentadbir ('LA') masih

- A belum diperolehi. LA hanya dikeluarkan kepada responden kedua kemudian dari itu. Responden-responden kemudian bertindak untuk tidak meneruskan dengan perjanjian, berakibat perayu memohon pelaksanaan spesifik dan gantirugi kerana kemungkiran kontrak di Mahkamah Tinggi. Mahkamah Tinggi memutuskan bagi pihak
- B perayu tetapi keputusan itu berjaya dirayui oleh responden-responden di Mahkamah Rayuan. Perayu merayu seterusnya ke Mahkamah Persekutuan dan persoalan undang-undang utama yang berbangkit adalah sama ada perjanjian di sini menjadi sah dan boleh dikuatkuasa sebaik sahaja LA dikeluarkan.
- C **Diputuskan (menolak rayuan)**
Oleh Arifin Zakaria HMP menyampaikan penghakiman mahkamah:
- D (1) Mahkamah ini bersetuju dengan pandangan Mahkamah Rayuan bahawa responden-responden kedua hingga keenam telah menurunkan tandatangan mereka di perjanjian bukan untuk atau bagi pihak pusaka, tetapi sebagai telah ditandatangani oleh pusaka sendiri. Juga, pada tarikh perjanjian dimeterai,
- E mereka tidak mempunyai sebarang hakmilik atau kepentingan yang sah terhadap tanah-tanah, dan kerana itu tidak berada dalam kedudukan undang-undang untuk memberi apa-apa kepentingan kepada perayu bersabit dengan perjanjian.
- F (2) Pandangan yang diutarakan oleh Mahkamah Rayuan adalah selaras dengan s. 39 Akta Probet dan Pentadbiran 1959. Tanah-tanah hanya terletak hak kepada responden kedua hanya apabila beliau memperolehi LA. Selanjutnya, mahkamah ini bersetuju dengan Mahkamah Rayuan bahawa surat-surat izin tidak dapat membantu perayu. Ini kerana responden-responden
- G yang lain tidak mempunyai hak untuk mengizinkan responden-responden kedua dan keenam untuk memasuki perjanjian bagi pihak pusaka. Hanya pentadbir yang dilantik di bawah Akta Probet dan Pentadbiran 1959 mempunyai kuasa untuk berbuat demikian. Oleh itu, responden-responden kedua dan keenam
- H adalah tidak berkompeten untuk memasuki perjanjian bagi pihak pusaka. Begitu juga, perjanjian tidak boleh mengikat responden-responden kerana ia adalah perjanjian yang sepatutnya dibuat di antara pusaka Ujagar Singh dan perayu. Oleh kerana responden-responden bukan pihak kepada
- I perjanjian, maka ia tidak boleh mengikat mereka. Ianya

mengikut bahawa responden-respondeen kedua dan keenam tidak boleh memasuki perjanjian bagi pihak pusaka tanpa mendapat LA terlebih dahulu. Oleh itu, perjanjian adalah tidak sah dan tidak boleh dikuatkuasakan.

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Case(s) referred to:

Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC (*refd*)

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Kersah La'Usin v. Sikin Menan [1964] 1 LNS 57 HC (*refd*)

Nik Mohamed Salleh v. Tengku Besar Zabidah [1969] 1 LNS 121 FC (*refd*)

Noordin Mat Dom v. Yahya Mohamed Jalit [1952] 1 LNS 69 HC (*refd*)

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Silimuthu v. Amalu & Anor [1981] 1 LNS 193 HC (*refd*)

Tan Swee Lan v. Engku Nik Engku Muda & Ors [1973] 1 LNS 156 FC (*refd*)

Legislation referred to:

Probate and Administration Act 1959, s. 39

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For the appellant - Dato' BS Sidhu (Sharon Sidhu with him); M/s BS Sidhu & Co

For the respondents - Gurbachan Singh Bagawan Singh; M/s Bachan & Kartar

Reported by Usha Thiagarajah

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JUDGMENT**Arifin Zakaria FCJ:**

[1] This appeal came before us on a single question of law which reads as follows:

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Whether the Joint Venture Agreement dated 5 October 1992 entered into by the Appellant (of the one part) and by the Second and Sixth Respondents (of the other part) before the grant of letters of administration and before Distribution Order is made is a valid and enforceable agreement and binding on all the Respondents once the letters of administration are issued and Distribution Order is made and the parties to the Joint Venture Agreement are in a position to specifically perform the Joint Venture Agreement.

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[2] After having heard arguments of counsel for the parties we adjourned the matter for our consideration and we now give our decision and reasons for the same.

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A The Background Facts

[3] The claim by the appellant (plaintiff in the court below) arose out of the agreement dated 5 October 1992 (the agreement) purportedly entered into by the Estate of Ujagar Singh s/o Bhagat Singh (deceased) (the Estate) of the one part and the appellant on the other part. The agreement relates to the development of 2 pieces of land namely, EMR 4092 lot 2767 and EMR 4093 Lot 2768, Mukim Setapak, Wilayah Persekutuan Kuala Lumpur. The joint-venture involved the construction of four 10-storey blocks of twenty residential units in each block and two 15-storey blocks with thirty residential units in each block. The Estate will be entitled to 45 units which are referred to in the agreement as “the Owner’s Entitlement” while the balance to be allotted to the appellant as “the Developer’s Premises”. The agreement was entered into by Harinder Singh s/o Ujagar Singh, the son of the deceased, and Kishen Kaur d/o Mihan Singh, the widow of the deceased, the 2nd and 6th respondents respectively. The question is in what capacity did they execute the agreement? It is not in dispute that at the date of the execution of the agreement, letters of administration of the Estate had not been issued. It was only granted on 4 January 1994 and extracted on 12 May 1994. The 2nd respondent was made the sole administrator of the Estate. The beneficiaries refused to proceed with the agreement and hence this action.

F [4] The appellant filed this suit against the administrator of the Estate and eight others, who are the beneficiaries of the Estate in which the appellant prayed for the following orders:

G (i) An order that the defendants do apply to the High Court Kuala Lumpur for permission of the court to transfer the said land mentioned in the Joint Venture Agreement dated 5 October 1992 between Estate of Ujagar Singh s/o Bhagat Singh (hereinafter called ‘the owner’) and Futuristic Builders Sdn. Bhd. (hereinafter called ‘the developer’) and that the Defendants apply for leave of the said court to have the said lands transferred to the plaintiff and that the Defendant shall make such application to the court within one (1) month from the date of this Order;

H (ii) Specific performance of the Joint Venture Agreement dated 5 October 1992;

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- (iii) An Order and/or a Declaration that all the relevant documents are to be drawn within two (2) weeks from the date of the order by the High Court by the defendant's solicitors, Messrs Inderjit Singh and/or any other solicitors to effect the transfer of the said lands held under EMR No. 4092 Lot No 2767 and EMR No. 4092 Lot 2768 both in the Mukim of Setapak, District of Wilayah Persekutuan measuring approximately 1 acre 3 rood 357 poles (collectively called 'the said lands') to the plaintiff and if the defendants neglect or refuse or are out of jurisdiction, the Senior Assistant Registrar of the High Court Kuala Lumpur be directed to execute the same on behalf of the defendants; **A**
- (iv) All necessary and consequential Orders and Directions as the Honourable Court may deem fit to provide; **B**
- (v) Damages for breach of contract in addition to specific performance, and the 'said Lands' to be valued by a licensed valuer to be appointed by the Plaintiff whose decision as to the market value of the said Lands shall be binding on the parties to the Joint Venture Agreement dated 5 October, 1992; **C**
- (vi) Interest at 8% per annum on such damages from 5 October 1992 until the date of realization and that the damages shall be calculated according to the valuation of the said Lands by a licensed valuer on the date of the award; **D**
- (vii) Costs of this action to be taxed and to be paid by the defendants to the plaintiff; **E**
- (viii) Such further or other relief as the Honourable Court may deem fit to provide. **F**
- [5]** In their counter claimed the respondents asked for the following orders: **G**
- (a) for a declaration that the Joint Venture Agreement dated 5 October 1992 is hereby declared null and void.
- (b) alternatively for an order that the Joint Venture Agreement dated 5 October 1992 be rescinded. **H**
- (c) for an order that the two titles Kuala Lumpur GM 163 and 164 (EMR 4093 and 4092) for Lots 2767 and 2768 be returned to the defendants forthwith. **I**

- A (d) damages
- (e) Cost of this action
- (f) such further and other relief as this Honourable Court may deem fit to provide.

B [6] The High Court allowed the appellant's application for specific performance coupled with the necessary consequential orders which do not concern us here as they stand or fall together with the order for specific performance. Against the

C orders of the High Court the respondents appealed to the Court of Appeal.

The Principal Issue Before The Court Of Appeal

D [7] The main challenge against the decision of the High Court is the refusal of the learned trial judge to consider the contention of the respondents that the agreement is invalid because it was executed before the grant of the letters of administration. This is what the learned trial judge have to say concerning the issue:

- E 5.(1) In their Statement of defence at para. 2 the defendants allege that the Agreement is not valid because as it was signed before the letters of administration was issued there was no legally constituted person or entity existed to sign it on behalf of the Estate. But at the trial this issue was not taken up
- F by the defendants and it is manifestly clear from their Counsel's written submission that they do not dispute the validity of the Agreement on its inception and its binding effect on them. However, in their Counsel's **further written submission**, they contend that the Agreement is void and invalid on the ground that it was entered on a **mutual mistake of fact. I decline to consider this issue because it is not pleaded.** It is trite that the court only decides on the pleadings.
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(Emphasis added.)

H [8] On this issue the Court of Appeal was of the view that the failure of the learned counsel for the respondents to raise this issue in his submission does not preclude the learned trial judge from considering the issue. The Court of Appeal in their judgment stated thus:

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It is true that the submission by the learned counsel for the defendants does not touch at all on the issue of their pleadings at para. 2 of the statement of defence, but more so, in the light of what was submitted by the learned counsel for the plaintiff as mentioned above taken together with the pleadings of the defendants and the evidence before it, the learned judge could not have ignored the defence of the defendants of invalidity and unenforceability of the joint venture agreement.

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[9] On that premise the Court of Appeal proceeded to consider the issue and went on to hold that the agreement was null and void. The appellant was dissatisfied with the said decision and hence this appeal.

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Our Decision And Reasons

[10] On the failure of counsel to submit on the validity issue, we are in agreement with the court of appeal that it should not preclude the learned judge from considering the issue as the issue is linked to the issue whether all the respondents could be taken to have signed the agreement on the strength of the letter of authorization of 21 May 1992. We will be referring to this letter in due course.

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[11] On the merit we need firstly to consider the agreement itself. It clearly states that the agreement is between the Estate of Ujagar Singh s/o Bhagat Singh and the appellant herein. The agreement was executed by the 2nd and 6th respondents purportedly on behalf of the Estate of Ujagar Singh. It is not stated in what capacity they signed the agreement. The respondents contend that the agreement is not binding on the Estate as on the date of execution of the agreement no letters of administration had been issued. It follows therefore that the persons who purported to sign the agreement on behalf of the Estate had no valid authority to do so. On that count alone the respondent contend that the appeal must fail. The appellants before us contend that the Court of Appeal erred in coming to its decision in failing to consider the facts of the case fully and the authorities applicable to this case.

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[12] It is submitted for the appellants that although the Agreement was signed by the 2nd and 6th respondents all the other respondents had given their consent to the same as

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A evidenced by the document dated 5 October 1992 and the letter addressed to the appellants dated 27 June 1992. The material part of the first document reads:

B This is to certify that we, the undersigned being heirs of the late Ujagar Singh do hereby agree to allow Madam Kishen Kaur d/o Mihan Singh I/C No. 7972609 and Harinder Singh s/o Ujagar Singh I/C No. 2999881 to act on our behalf on all matters regarding the properties, both moveable and immovable, of the late Ujagar Singh s/o Bhagat Singh I/C No. 3849341.

C Signed this 21st day of May in the year 1992.

[13] This document was signed by all the beneficiaries other than the 2nd and the 6th respondents.

[14] The relevant part of the letter of 27 June 1992 reads:

D RE: Agreement For Emr No. 4092 Lot No. 2767 And Emr No. 4093 Lot No. 2768 Mukim Setapak, District Of Wilayah Persekutuan

E In consideration of you agreeing to enter into a joint venture agreement with the estate of Ujagar Singh s/o Bhagat Singh, we, the undersigned do hereby covenant and undertake to do the following:

F (i) that upon issuance of the letters of administration and probate for the Estate of Ujagar Singh, we hereby agree to and shall cause the Administrators and/or Executors to rescind the joint venture agreement for the above property dated 12 August 1989 with M/s Hup Hin Soon Sdn. Bhd. and we shall be absolved from all liabilities incurred or to be incurred under the Joint Venture Agreement. Simultaneously with the rescission of the above Joint Venture Agreement we shall execute a new joint venture agreement with you or your nominees to develop the aforesaid land;

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H (ii) in the event there are any other beneficiaries other than those named below, then we shall cause the new beneficiaries to consent to the execution of the joint venture agreement between you or your nominees and the Estate of Ujagar Singh. However we shall be responsible for whatever consequences that may arise as a result of the new beneficiaries;

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(iii) to appoint Kishen Kaur d/o Mihan Singh and Harinder Singh s/o Ujagar Singh to be our authorized attorney to negotiate, deals with and sign any documents or agreements with you or your nominees.

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We state herein that our above undertakings and covenants shall be irrevocable.

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Thank you.

[15] The letter was addressed to the appellant.

[16] The letters of administration was granted on 4 January 1994 and in the interim the appellants had been paying all the outgoings relating to the lands. The distribution order was granted on 19 September 1994 and with that the appellants contend that the respondents became the registered proprietors of the land. In the circumstances the appellants claim the respondents are therefore obliged to carry out the terms of the agreement. In support the learned counsel for the appellants cited a number of authorities which we will consider in due course. In the context of the present case we are of the view that it is pertinent to firstly consider what are the rights and interests of a beneficiary over the asset of the Estate. The leading case on this is the case of *Chor Paik Har v. Farlim Properties Sdn. Bhd.* [1997] 4 CLJ 393.

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[17] In that case, following a number of authorities, the Federal Court stated the legal position as follows:

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Based on the above commentaries, founded no doubt on analogous principle of law concerning testate succession, it is our conclusion that in law, a beneficiary under intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

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[18] Learned counsel for the appellants argued that *Chor Paik Har* cannot apply to the facts in the present case for the following reasons. In that case he said the beneficiaries tried to convey their interest in the estate of the deceased before the administration of the estate was completed, that of course they cannot do. Unlike in the present case the agreement is not to convey or transfer the right or interest of the beneficiaries in the estate but a joint

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A venture agreement conditional upon the respondents obtaining the letters of administration for the Estate. This he said is found in cl. 14(b) of the agreement the relevant part of which reads:

B (b) The Owner hereby represents and undertakes that within fourteen (14) days from the date of issue of the letters of administration and/or probate from the court he will sign and execute all sale and purchase agreements relating to the Developers premises in escrow ...

C [19] In other words the agreement is conditional upon the issue of the letters of administration. Upon the grant of letters of administration the respondents have the legal capacity to carry out the terms of the agreement and are therefore obliged to comply with the terms of the agreement.

D [20] The appellants cited a number of authorities in support of its contention namely: *Nik Mohamed Salleh v. Tengku Besar Zabidah* [1969] 1 LNS 121 a decision of the Federal Court. In that case the Federal Court upheld the decision of the High Court granting specific performance of the agreement relating to land entered into by the beneficiaries (who were not the registered owner of the land at that time) so long as the land eventually got vested in any one of them. From the facts in that case the agreement was signed by the second and third defendants and one Nik Ti, since deceased. The learned judge in that case gave judgment for the plaintiff and in so doing pointed out that all the beneficiaries agreed before the settlement officer to the transfer of the land to the plaintiff and the fact that the land was subsequently transferred to the first defendant showed that it was their desire that the first defendant comply with the wishes of Nik Ti and the other two defendants by transferring the land to the plaintiff in accordance with the agreement. Gill FJ at p. 76 observed as follows:

H In my judgment the High Court was quite right in ordering specific performance of the sale agreement. This is clear from the following passage in the judgment of the Lord Chancellor (Lord Westbury) in *Holroyd v. Marshall*:

I ... if a vendor .. agrees to sell .. property .. of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards become possessed of property answering the description in the

contract, there is no doubt that a Court of Equity would compel him to perform the contract, ... For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it at the time of its execution will be no answer when the means of doing so are afterwards obtained.

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[21] The learned counsel for the appellant also relied on the case of *Tan Swee Lan v. Engku Nik Engku Muda & Ors* [1973] 1 LNS 156 for the proposition that the beneficiaries are bound by the agreement entered by them even though at the date of the agreement the land was still part of the estate of one Engku Muda bin Engku Besar.

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[22] On the other hand in *Noordin bin Mat Dom v. Yahya bin Mohamed Jalit* [1952] 1 LNS 69, the agreement was that when the administration is completed the defendant would transfer the land in question to the plaintiff, and furthermore anyone of the beneficiaries cannot make claim to the land. When he signed the agreement he was the administrator of the estate of Mohamed Jalit, deceased. The court held that the defendant signed the agreement in his personal capacity and not as administrator of the estate. The court did not grant specific performance as the agreement was entered into in his personal capacity but instead awarded damages *in lieu* thereof. (See also *Silimuthu v. Amalu & Anor* [1981] 1 LNS 193; *Kersah La'Usin v. Sikin Menan* [1964] 1 LNS 57).

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[23] As may be observed the common thread in all these cases the agreements were entered into by the vendors in their capacity as beneficiaries. Unlike in the present case, where the agreement was expressly stated between the Estate of the deceased on the one hand and the appellant on the other. No doubt the 2nd and 6th respondents did sign the agreement but at that time no letters of administration of the Estate had been issued. Therefore the question arises in what capacity did they sign the agreement. It cannot be in their capacity as administrators because no letters of administration has been issued on the date of the agreement and neither could it be in their personal capacity because the agreement was stated to be between the Estate and the appellant.

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A [24] In holding the agreement invalid and unenforceable the Court of Appeal stated their reasons as follows:

B Looking at the joint venture agreement, it was purportedly entered into between the Estate of Ujagar Singh and the plaintiff. Certain rights and interest in the estate by virtue of the agreement were to go to the plaintiffs through the hands of the 6th and the 2nd defendants who put their respective signature to the agreement, not even for and on behalf of the estate but as having been signed by the estate. As for both of them, as of that date, they did not even have any valid title or interest in the said Lands forming part of unadministered property of the deceased. Having no such title or interest in the said Lands they were not in the legal position to pass on any interest to the plaintiff by virtue of the joint venture agreement. On such findings, our firm view is that the said joint venture agreement is invalid and unenforceable. In the view that we take, there is no alternative for us but to say that the claim by the plaintiff against the defendants must fail. The learned judge recognized as a fact that the agreement was signed by the 6th and the 2nd defendants before the issue of the letters of administration to the Estate of Ujagar Singh. But we disagree with the learned judge that it was signed as the authorized representatives of the defendants, for the reason stated earlier. From the wordings of the agreement, we cannot see any connection between it and the two letters respectively of 21 May 1992 and 27 June 1992. Going with that premise in mind, the learned judge went into the merit ignoring the evidence and para. 2 of the statement of defence put up by the defendants when he said thus at para. 5 of his judgment:

G 5(1) In their Statement of Defence at paragraph 2 the defendants allege that the Agreement is not valid because as it was signed before the letters of administration was issued there was no legally constituted person or entity existed to sign it on behalf of the estate. But at the trial this issue was not taken up by the defendants and it is manifestly clear from their counsel's written submission that they do not dispute the validity of the Agreement on its inception and its binding effect on them. However, in their counsel's further written submission, they contend that the Agreement is void and invalid on the ground that it was entered on a mutual mistake of fact. I decline to consider this issue because is it not pleaded.

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[25] We agree entirely with the view expressed by the Court of Appeal. This is in line with the provision of s. 39 of the Probate and Administration Act 1959 which reads: A

39. (1) Where a person dies intestate his movable and immovable property until administration is granted in respect thereof shall vest in the Corporation* in the same manner and to the same extent as it vests in the Probate Judge in England. B

(2) On the making of an order for a grant of administration by the Court all such property shall vest in the administrator.” C

(* Note: Before 1 August 1995, the word “Corporation” reads “Official Administrator”)

[26] Clearly the lands only became vested on 2nd respondent when letters of administration was granted to him by the court on 4 January 1994. D

[27] Further we agree with the Court of Appeal that the document of 21 May 1992 and the authorization letter of 27 June 1992 could not assist the appellant in the present case. This is because the 3rd, 4th, 5th, 6th, 7th, 8th and 9th respondents do not have any right to authorize the 2nd and 6th respondents to enter into the agreement on behalf of the Estate. It is only an administrator appointed under the Probate and Administration Act 1959 that will have the authority to do so. Until the grant of letters of administration is made no body has the authority to act on behalf of the Estate. Thus the 2nd and 6th respondents were not competent to enter into the agreement on behalf of the Estate. And neither could the agreement be binding on the beneficiaries because it was an agreement purportedly made between the Estate of Ujagar Singh and the appellant. The beneficiaries were not party to the agreement. It could not therefore be binding on them. E
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[28] Reverting to the question posed we would endeavour to answer it in the following manner. The 2nd and 6th respondents could not have entered into the agreement on behalf of the Estate without the grant of the letters of administration. Therefore we H

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A would hold the agreement in question invalid and unenforceable as against the respondents. Thus on the facts of the present case our answer to the question posed to us would be in the negative.

[29] In the result we would dismiss this appeal with costs.

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